

## REMARKS/ARGUMENTS

### Priority Claim

Applicants respectfully disagree with the Office's comments regarding the priority claim. In the interest of expediting prosecution, Applicants have cancelled those claims that could possibly be impacted by the application's failure to receive the benefit of the priority claim.

### Claims

Claims 4-24, 33 and 77-86 are currently pending in the application with claims 1-2, 25-32, and 34-76 withdrawn from examination as directed to non-elected subject matter. With the current amendment, claims 1-3, 5-7, 10, 13, 15-16, 20, 23-32, 34-76, 80, 83, and 86 have been canceled. Cancellation of these claims is without prejudice, without intent to acquiesce in any rejection of record, without intent to abandon any previously claimed subject matter and has been done merely in an effort to expedite prosecution.

### Discussion of the 35 U.S.C. § 112 Rejections

#### **35 U.S.C. § 112, Second Paragraph**

Claims 77, 5-6 and claims 78-86, 7-24 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Specifically, the Office requests that Applicants clarify that the claimed polynucleotides themselves do not have ABC1 activity. Accordingly, independent claims 77-79 and dependent claims 8-9, 11-12, 14, 17-19, 21-22, 81-82, and 84-85 have been amended to clarify that the claimed polynucleotides encode polypeptides having ABC1 activity. Without conceding to the merits of any of the Examiner's allegations and solely in an effort to expedite prosecution, claims 5-7, 10, 13, 15-16, 20, 23-24, 80, 83, and 86 have been canceled, rendering the rejection moot as to these claims.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 112, second paragraph, rejections.

**35 U.S.C. § 112, First Paragraph**

Claims 5-7, 13, 16, 20, and 23 have been rejected under 35 U.S.C. § 112, first paragraph, as allegedly not being enabled. Without conceding to the merits of any of the Examiner's allegations and solely in an effort to expedite prosecution, claims 5-7, 13, 16, 20, and 23 have been canceled, rendering the rejection moot as to these claims.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 112, first paragraph, rejections.

**Discussion of the 35 U.S.C. § 102/103 Rejections**

Claims 4-24 and 33 have been rejected under 35 U.S.C. § 102(e) as anticipated by, or in the alternative, obvious over Rosier-Montus et al. (US 2002/0146792-A1, US Priority 5-2-2000). Specifically, the Office maintains that claims 4-24 are drawn to an isolated polynucleotide selected from a group of polynucleotides, which group includes a polynucleotide encoding a polypeptide having 98% identity to SEQ ID NO: 2. The Office argues that Rosier-Montus et al. discloses a polynucleotide that encodes a polypeptide which is more than 98% identical to SEQ ID NO: 2. Without conceding to the merits of any of the Examiner's allegations and solely in an effort to expedite prosecution, claims 4, 8, 9, 12, 19, 22, and 33 have been amended to delete reference to a polynucleotide encoding a polypeptide having 98% identity to SEQ ID NO: 2. Also, without conceding to the merits of any of the Examiner's allegations and solely in an effort to expedite prosecution, claims 5-7, 10, 13, 16, 20, and 23 have been canceled, rendering the rejection moot as to these claims. Claims 11, 14, 17, 18, 21, and 24, all of which are dependent on claim 77, are drawn to recombinant vectors, compositions, and cells containing an isolated polynucleotide comprising SEQ ID NO: 1. Given that Rosier-Montus et al. does not teach or suggest SEQ ID NO: 1, as evidenced by the fact that claim 77 was not included in the rejection, Rosier-Montus et al. does not teach or suggest claims dependent thereon.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 102(e) rejections.

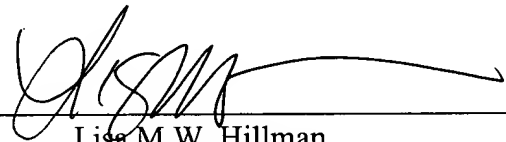
**CONCLUSION**

In view of the above amendments and remarks, the application is considered to be in good and proper form for allowance and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,  
**McDonnell Boehnen Hulbert & Berghoff LLP**

Date: June 30, 2004

By: \_\_\_\_\_



Lisa M. W. Hillman  
Registration No. 43,673